

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष  
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No. 315/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2019-20**

M/s. BPS Infrastructure  
Village- Raseda, Tehsil-Baloda Bazar,  
Baloda Bazar-493 332 (C.G.)  
PAN : AAOFB5038R

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer  
Ward-1(3), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ravi Agrawal, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 30.11.2023

घोषणा की तारीख / Date of Pronouncement : 05.12.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 29.09.2021, which in turn arises from the intimation issued by the Centralized Processing Center (CPC)/A.O under Sec.143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 06.03.2020 for the assessment year 2019-20. The assessee has assailed the impugned order on the following grounds of appeal:

“1. That, on the facts and in the circumstance of the case, the learned CIT (A), NFAC, New Delhi, erred in dismissing the appeal.

1.1. That Ld.CIT(A) was not justified in upholding the adjustment made by the CPC, Bengaluru while processing the income tax return u/s 143(1) based on certain inputs from tax audit report of the assessee in respect of the disallowance of Rs.19,84,415.00 on account of delay in making the payment towards the employee's contribution for Provident fund/ESI.

1.2. That Ld. CIT(A) did not appreciate the fact that the impugned amount of Rs.19,84,41500 were duly paid before the due date of section 139(1).

2. That other ground shall be pressed at the time of hearing.”

2. Succinctly stated, the assessee firm had e-filed its return of income for A.Y.2019-20 on 30.09.2019, declaring an income of Rs.14,66,150/-. The A.O/CPC, Bengaluru vide intimation issued u/s. 143(1) of the Act, dated 06.03.2020 disallowed the assessee's claim for deduction of delayed deposit of employees share of contribution towards ESI/PF of Rs.19,84,415/- u/s. 36(1)(va) of the Act and determined its income at Rs.34,50,570/-.

3. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. Observing, that the disallowance of the assessee's claim for deduction of delayed deposit of employees share of contribution towards ESI/PF was rightly made by the A.O u/s. 36(1)(va) of the Act, the CIT(Appeals) approved the adjustment made by the DCIT, CPC, Bengaluru u/s. 143(1) of the Act.

4. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal.

5. Shri Ravi Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold of hearing of the appeal submitted that a delay of 690 days was involved in filing of the present appeal. Elaborating on the reasons leading to the aforesaid delay, it was submitted by the Ld. AR that the same had occasioned for the reason that the accountant of the assessee firm, viz. Shri Amitabh Paul had failed to bring to the notice of the partners of the assessee firm the order of the CIT(Appeals), dated 29.09.2021. The Ld. AR submitted that Shri Bhuvneshwar Prasad Sahu, partner of the assessee firm received the aforesaid order from his accountant only as on 08.10.2023. The Ld. AR submitted that Shri Amitabh Paul, accountant had admitted that though the order of the CIT(Appeals) was received by him way back but it had skipped from his mind to bring the same to the notice of the partners of the assessee firm. Carrying his contention further, the Ld. AR submitted that it was only when Shri Bhuvaneshwar Prasad Sahu (supra) had further brought the aforesaid order of the CIT(Appeals) on 29.09.2021

to the notice of his chartered account, viz. Shri Ajay Agrawal that he was informed that the appeal of the assessee firm had been dismissed by the CIT(Appeals), Raipur. The Ld. AR further submitted that as the order of the CIT(Appeals) was dropped in the e-mail account, viz., "bpsahu\_1974@rediffmail.com" i.e. e-mail account that was generated by his accountant Shri Amitabh Paul and the partners of the assessee firm had no access to the same, thus, it was for the said bonafide reason that they had remained unaware about the order passed by the CIT(Appeals) dated 29.09.2021. The Ld. AR in order to fortify the aforesaid factual position had taken us through the "affidavit" of Shri Bhuwaneshwar Prasad Sahu (supra) dated 16.10.2023, which reads as under:

**शपथ-पत्र**

शपथकर्ता निम्नलिखित कथन शपथ पूर्वक करता हूँ कि :-  
 पार्टनर फर्म बीपीएस इंफ्रास्ट्रक्चर में पार्टनर हूँ और यह शपथ पत्र पार्टनर की हैसियत से प्रस्तुत करता हूँ।

2. यह कि हमने AY 2019-20 के लिए CIT(A) के समक्ष अपील फाइल दिनांक 20.06.2020 को किया था।
3. यह कि CIT(A) के द्वारा अपील आर्डर दिनांक 29.09.2021 को हमारे email bpsahu1974\_@rediffmail .com में प्राप्त हो गया था।
4. यह कि मुझे अंग्रेजी नहीं आती है। तथा मैं अपने दस्तखत हिन्दी में करता हूँ।
5. यह कि मुझे e-mail देखना और इस्तेमाल करना नहीं आता। हमारे अकाउंटेंट श्री अमिताभ पाल पिता स्व. श्री बी.एफ पाल पता सिविल लाईन बलौदाबाजार ने हमारे लिये उपरोक्त email बनाया है। तथा वही इसको देखता है। तथा हमारे लिए इस्तेमाल करता है।
6. यह कि हम इस काम के लिए अपने अकाउंटेंट श्री अमिताभ पाल पर पूरी तरह निर्भर है।
7. यह कि पिछले दिनों दिनांक 08/10/2023 को हमारे एकाउंटेंट ने मुझे बताया की इंकमटेक्स डिपार्टमेंट से एक email बहुत दिन पहले आया था पर वह मुझे बताना भूल गया।
8. यह कि जब मैंने वह email अपने सी.ए अजय अग्रवाल को दिखाया तब उन्होंने मुझे जानकारी दिया की हमारी अपील खारिज हो गयी है।
9. यह कि हमारे अकाउंटेंट के भूल की वजह से मुझे यह जानकारी दिनांक 08/10/2023 को हुई।
10. यह कि मैं यह शपथपत्र आयकर के ट्रिबुनल रायपुर में दाखिल करने के लिए प्रस्तुत कर रहा हूँ।

6. Backed by the aforesaid facts, the Ld. AR submitted that as the delay in filing of the present appeal was purely on account of bonafide reasons and not for any lackadaisical approach or callous conduct of the assessee firm, therefore, the same, in all fairness be condoned.

7. Per contra, the Ld. Departmental Representative (for short 'DR') had raised objection to the seeking of the condonation of delay in filing of the present appeal by the assessee appellant.

8. I have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

9. On a careful perusal of the facts leading to the delay in filing of the present appeal, I am unable to persuade myself to subscribe to the same. I, say so, for the reason that the delay in filing of the present appeal can by no means be held to be justified for the reason that partners of the assessee firm had remained unaware about the order passed by the CIT(Appeals) dated 29.09.2021 which was dropped in the email account of his accountant, viz. Shri Amitabh Paul. As the reason given by the assessee firm regarding the inordinate delay involved in filing of the present appeal does not inspire any confidence, and in fact reveals a lackadaisical conduct of the partners of the assessee firm, therefore, the same cannot be summarily accepted on the very face of it. Considering the callous and lackadaisical conduct of the partners of the assessee firm who ought to have remained vigilant about their income tax matter, I am unable to persuade myself to concur with the claim of the Ld. AR that the delay in filing of the appeal had occasioned for bona fide reasons.

10. The co-ordinate bench of the Tribunal in the case of **M/s. Phoenix Mills Ltd. Vs. Asstt. CIT in ITA No.6240/MUM/2007 for A.Y.1999-2000, dated 23.03.2020**, had held that where an application for condonation of delay has been moved bonafide, then, the Court would normally condone the delay, but where the delay has not been explained based on a justifiable reason and in fact there is an unexplained and inordinate delay coupled with negligence or sheer carelessness, then, the discretion of the court in such cases would normally tilt against the applicant. Reverting to the facts of the present case, I have already examined the reasons that had led to the inordinate delay of 690 days, and, as the same cannot be held to have occasioned due to bonafide reasons, therefore, there appears to be no reason to adopt a liberal view and condone the delay therein involved. Also, the fact that the assessee firm was duly assisted by a chartered accountant; therein further fortifies my conviction that the claim of the assessee that it had remained oblivion of the order of the CIT(Appeals) is further disproved. Also, I may observe at this juncture that the law of limitation has to be construed strictly as it has an effect of vesting on one and taking away the right from the other party. The delay in filing of an appeal cannot be condoned in a mechanical or a routine manner since that would undoubtedly jeopardize the legislative intent behind Section 5 of the Limitation Act.

11. I may herein observe that in the case of **State of West Bengal Vs. Administrator, Howrah 1972 AIR SC 749**, the **Hon'ble Apex Court** had held that the expression "sufficient cause" should receive a liberal construction so as to

advance substantial justice, particularly when there is no motive behind the delay. The expression "sufficient cause" will always have relevancy to reasonableness. The action which can be condoned by the court should fall within the realm of normal human conduct or normal conduct of a litigant. However, as observed by me hereinabove, as the assessee appellant in the present case is acting in defiance of law, therefore, there can be no reason to allow its application and condone the substantial delay of 690 days involved in preferring of the captioned appeal.

12. Also, I may herein draw support from a Third Member decision of a co-ordinate Bench of the Tribunal, in the case of **Jt. CIT Vs. Tractors and Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai)**, wherein a fine distinction was drawn between normal delay and inordinate delay. It was held as under:

"A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach, but in the latter case no such consideration may arise and such a case deserves a liberal approach."

In the present case, the delay of 690 days cannot be simply condoned on the basis of the unsubstantiated claim of the assessee that the same had occasioned on account of failure on the part of assessee before the Tribunal.

13. Also, as observed by the **Hon'ble Supreme Court** in the case of **Ramlal, Motilal and Chotelal Vs. Rewa Coalfields Ltd. AIR (1962) 361 (SC)** that seeker of justice must come with clean hands, therefore, now when in the present appeal

the assessee appellant had failed to come forth with any good and sufficient reason that would justify condonation of the delay involved in preferring of the captioned appeal, I decline to condone the delay of 690 days and, thus, without advertent to the merits of the case dismiss the captioned appeal of the assessee as barred by limitation.

14. Apropos the reliance placed by the Ld. AR on the judgment of the **Hon'ble Apex Court** in the case of **Collector, Land Acquisition Vs. Mst. Katiji and Others (supra)**, the same being distinguishable on facts as against those involved in the captioned appeal before me, thus, would not assist its case. The Hon'ble Apex Court, stressing upon considering of a "sufficient cause" by the Courts, while deciding as to whether the delay involved in the filing of the appeal merits to be condoned, had observed that the said term employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice which is the life purpose of existence of the institution of courts. At the same time, the Hon'ble Apex Court had, while observing that the courts should do even-handed justice on merits in preference to the approach that scuttles a decision on merits, had inter alia, held that an appeal or any application may be admitted after the prescribed period if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. For the sake of clarity, the observations of the Hon'ble Apex Court are culled out as follows:

"1. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

(emphasis supplied by me)

As in the case of the present assessee appellant before me, there is delay of 690 days involved in the filing of the appeal by the assessee appellant the reason for which it had failed to explain, and the same appears to be attributable to the callous approach and lackadaisical conduct that it had adopted at the stage of filing of the appeal before me, therefore, the judgment mentioned above of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. Mst. Katiji and Others (supra) would not carry its case any further. Accordingly, as in the captioned appeal before me, as there is no "sufficient cause" explained by the assessee appellant leading to the delay of 690 days in the filing of the appeal before me, therefore, the judgment above would not assist its case before me.

15. In the result, the appeal of the assessee firm in ITA No.315/RPR/2023 for A.Y. 2019-20 is dismissed in terms of my aforesaid observations.

Order pronounced in open court on 05<sup>th</sup> day of December, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 05<sup>th</sup> December, 2023.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.